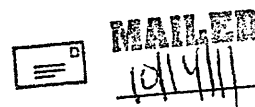
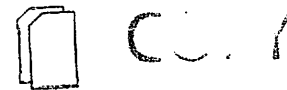


CALIFORNIA DEPARTMENT OF EDUCATION
Investigation Report
Case S-0102-11/12



Public Agency Kenneth Benny, Superintendent Mill Valley Elementary School District 411 Sycamore Avenue Mill Valley, CA 94941	Complainant Rosemary Szeman 1221 Waterview Drive Mill Valley, CA 94941
Special Education Director Andee Abramson, Director of Student Support Services	Parent [REDACTED]
Special Education Local Plan Area (SELPA) Penny Valentine, Director Marin County SELPA 1111 Las Gallinas Avenue San Rafael, CA 94913	Student Name [REDACTED]
Complaint Received August 15, 2011	Report Mailed October 14, 2011

INVESTIGATION PROCEDURES

Telephone interviews were conducted with the Complainant on September 15, 2011, and with the District on September 27, 2011. All submitted documents and statements were reviewed and considered in the preparation of this report.

Allegations One and Two were combined to address the student's behavioral issues and the student's opportunities to participate in school related activities.

SUMMARY OF ALLEGATION ONES AND TWO

The Complainant alleges the District prevented the student's full participation in school activities (e.g., lunch, recess, field day), due to behavioral referrals between March 7, 2011, to June 7, 2011, and failed to implement the student's behavior support plan (BSP), by using negative interventions instead of positive interventions, in violation of Title 34, Code of Federal Regulations (34 CFR) Section 300.107 and California Education Code (EC) Section 56043(i).

CITATION OF APPLICABLE LAW

34 CFR Section 300.107 requires:

- (a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP [individualized education program] Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

EC Section 56043(i) requires,

"A pupil's [IEP] shall be implemented as soon as possible following the individualized education program team meeting, pursuant to Section 300.323(c)(2) of Title 34 of the *Code of Federal Regulations* and in accordance with [EC] Section 56344."

FINDINGS OF FACT

1. Notes from the Amendment IEP dated December 7, 2010, document the team's review of the BSP, and IEP goals. Notes from the December 7, 2010, IEP reflect discussion of the use of positive reinforcers, as well as, the student's response to positive reinforcers and consequences for behavioral referrals.
2. The student's operative March 11, 2011, IEP includes a goal for appropriate social behavior and following adult directions. The BSP identifies the impeding behavior as not complying with adult direction, invading others personal space, becoming argumentative, and missing classroom instruction when the student is unable to maintain appropriate relationships with peers. The BSP indicates the student has a 1:1 aide to support and prompt the student for redirection to stay on task, and behave in an appropriate manner. The BSP provides for the student to earn approved activities when he follows school and classroom rules.
3. The BSP embedded in the March 11, 2011, IEP does not address the issue of loss of privilege (LOP) or identify consequences that would prevent the student from

participating in school activities, during the school day or outside of the school day, nor does it address the student's continued tardies to class.

4. District student assertive discipline records dated between March 29, 2011, to June 21, 2011, document the following violations and imposed consequences:
 - March 29, 2011: Behavior, inappropriate; Language, profanity: Assigned one hour detention after school on April 6, 2011
 - April 27, 2011: Behavior, disruptive; Behavior, inappropriate; Language, profanity; Assigned lunchtime detention on April 29, 2011, May 2 and May 3, 2011
 - May 2, 2011: Behavior, disobedience; assigned school detention for one hour on May 11, 2011
 - May 10, 2011: Tardy, habitual; Tardy, letter sent; Assigned detention on May 18, 2011, for 10+ tardies during current trimester
 - May 12, 2011: Tardy, habitual; Assigned detention for tardiness to school
 - June 1, 2011: Behavior, disobedience; Assigned three days of detention – June 1, 2, and 3, 2011, for bullying classmates
 - June 6, 2011: LOP letter mailed, no yearbook, no field day
 - June 21, 2011: Tardy, habitual; end of year attendance report, student accrued 25 tardies during 2010-2011, school year
5. The District response letter dated September 7, 2011, documents the student was not prevented from joining any of the extracurricular clubs, or activities, but was given detentions, and LOP for the 25 tardies to class, and referrals to the office for behavior.

CONCLUSION

The District did not meet the requirements of 34 *CFR* Section 300.107 and *EC* Section 56043(i). Rather than implementing strategies and supports included in the student's March 11, 2011, BSP, the District employed consequences that resulted in the student not participating in some school activities. **The District is out of compliance.**

REQUIRED CORRECTIVE ACTIONS

Allegations One and Two

1. On or before December 30, 2011, the District will provide evidence that they have reviewed the full text of 34 *CFR* Section 300.107 and *EC* Section 56043(i). Acceptable evidence shall include a written review of the state statute, and a distribution list of staff recipients.
2. On or before November 15, 2011, the District will provide the parent with a behavior assessment plan. Acceptable evidence shall include a copy of the assessment plan and proof of mailing.
3. On or before December 30, 2011, the District will convene an IEP team meeting to review the behavior assessment, and revise the student's BSP, including the content of positive educational strategies and supports that provide a full complement (i.e., office referrals, tardies) with respect to all the identified behavioral issues, and how they will be addressed with positive interventions. Acceptable evidence shall include a copy of the IEP with documentation of the IEP team's discussion of the assessment and BSP.

RECONSIDERATION NOTICE

The findings in this investigation report are specific to this case. While general rules are cited, findings in other investigations may differ due to the facts and issues in each case.

Pursuant to Title 5, *California Code of Regulations* Section 4665, either party may request reconsideration:


Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s) or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied. . . . Pending the Superintendent's reconsideration, the Department report remains in effect and enforceable.

A request for reconsideration must be postmarked 35 days from the receipt of the investigatory report.

Evidence of required corrective actions shall be sent directly to:

**James T. Johnson III, Administrator
Focused Monitoring and Technical Assistance Unit Three
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-327-6966 Phone
916-327-0843 Fax**

If you have questions regarding the report, corrective actions, or reconsideration, please contact the unit above. If compliance is determined in this investigation and no corrective actions are required, consider this case closed.

A handwritten signature in cursive script, appearing to read "James T. Johnson III", followed by the word "for" in a similar style.

Fred Balcom, Director
Special Education Division